IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5960 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE D.C.SRIVASTAVA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

GUJARAT STATE ROAD TRANSPORT CORPORATION

Versus

I M PATHAN

Appearance:

MR ASHISH M DAGLI for Petitioner

RULE SERVED for Respondent No. 1

CORAM : MR.JUSTICE D.C.SRIVASTAVA

Date of decision: 20/03/2001

ORAL JUDGEMENT

#. The respondent is served. He is absent. No counter affidavit has been filed, nor any advocate has been engaged by the respondent. As such, Shri Ashish M.Dagli, learned counsel for the petitioner has been heard.

#. The brief facts giving rise to this petition are as under :

The respondent was working as Driver in Gujarat State Road Transport Corporation, namely, the petitioner. The allegation against him was that, he remained absent from 6-3-1993 to 27-4-1993 without applying for any kind of leave. Departmental proceedings were initiated against him. Charge-sheet for misconduct was also served on the respondent. The respondent did not appear before the Enquiry Officer. Consequently, inquiry proceedings were conducted exparte and the charge against the respondent was found established from the evidence adduced during enquiry.

#. On the point of punishment, the Authority awarded punishment of stoppage of three increments. The order of punishment was challenged by the respondent before the Industrial Tribunal at Nadiad. The Industrial Tribunal found that the charge of misconduct against the respondent herein was fully established. However, keeping in view the service record of the respondent that there was no adverse entry against him and that the punishment awarded to the respondent was disproportionate to the charge established against him, the Industrial Tribunal modified the punishment and reduced it to the stoppage of only one increment. It is this order of the Industrial Tribunal, which is under challenge in this petition.

#. Shri Dagli has contended that, since the charge of misconduct was established, the Tribunal was not justified in reducing the quantum of punishment. He further argued that, since the charge of misconduct was established, the respondent could be dismissed. However, this contention is imaginary. It was well within the jurisdiction of Authority to dismiss the petitioner and then the order of dismissal could have been examined by the Industrial Tribunal. Since the order of dismissal has not been passed, the discretion of the Authority to dismiss the respondent is not a ground for interference with the order of the Industrial Tribunal.

#. Shri Dagli has further contended that, since the validity of the inquiry proceedings has not been challenged and there is no complaint of violation of principles of natural justice, the finding of the Enquiry Officer that the charge is established against the respondent hardly requires interference. This stand was accepted by the Industrial Tribunal also, which confirmed that the charge of misconduct was established against the

respondent.

#. The question for consideration in this petition is, whether the order of reduction of quantum of punishment requires interference. It should not be forgotten that the High Court is not sitting as a Court of Appeal over the Industrial Tribunal. It is, within the jurisdiction and discretion of the Industrial Tribunal to confirm the finding of the Enquiry Officer or modify the same. If, modification order has been given by the Industrial Tribunal on the quantum of punishment, the High Court need not and should not interfere in the order of the Industrial Tribunal. At the most, the High Court can see, whether the punishment awarded by the Tribunal is excessive and harsh or whether it is too lenient. On the facts and circumstances of the case, it can not be said that the punishment awarded by the Tribunal is lenient. It can, by no stretch of imagination be said to be harsh punishment, which has been ultimately awarded by the Tribunal.

#. The respondent remained absent from 6-3-1993 to 27-4-1993. The Tribunal, on the basis of material placed by the Corporation, found that the respondent had applied for leave for the period between 6-3-1993 to 27-3-1993 for the purpose of observing fast during Ramzan month. However, this application was not allowed. A note was found by the Tribunal that it was not granted. Thereafter, the respondent remained absent from duty. Thereafter, on 12-4-1993, a letter was written to the respondent to remain present. However, on 11-6-1993, he applied for leave from 6-3-1993 to 10-6-1993 on grounds of illness but, this was not granted because the application was not supported by any medical certificate. On these facts and circumstances of the case, the respondent will have to suffer financial loss because, the consequence of rejection of his application for leave from 6-3-1993 to 10-6-1993 will deprive him of salary and allowances. The Tribunal also examined the record of the respondent and found that there was nothing adverse in the record of the respondent and the past record was clean. The Tribunal further found that, no doubt, it was misconduct on the part of the respondent to remain absent without applying for leave, but, this, according to the Tribunal was not grave misconduct on account of which punishment of stoppage of three increments could be awarded. The Tribunal was, therefore, justified in reducing the quantum of punishment. No interference is, therefore, required in this petition, which is hereby dismissed. No order as to cost.

March 20, 2001. [D.C. Srivastava, J.]

/sakkaf